

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**JAMES GARDNER, individually and on
behalf of all those similarly situated,**

Plaintiff,

v.

**DRAFTKINGS, INC., a Delaware
corporation,**

Defendant.

Case No. 1:15-cv-12320-RWZ

**DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS
PROCEEDINGS**

ORAL ARGUMENT REQUESTED

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Attorneys for Defendant DraftKings, Inc.

September 1, 2015

Defendant DraftKings, Inc. (“DraftKings”) respectfully moves this Court, pursuant to the Federal Arbitration Act (“FAA”) (9 U.S.C. § 1, *et seq.*), for an order compelling individual arbitration of each of the claims raised by Plaintiff James Gardner (“Plaintiff”) in accordance with the terms of the parties’ binding arbitration agreement.

As explained in DraftKings’ supporting memorandum of law, the relationship between DraftKings and Plaintiff is governed by a written agreement requiring that “any and all disputes” that may arise between them be determined by binding, non-class arbitration. Based on this agreement (which is set forth in clear and unambiguous terms in DraftKings’ Terms of Use), DraftKings requested that Plaintiff voluntarily dismiss his putative class action and pursue his claims through individual arbitration. Plaintiff refused. DraftKings therefore moves this Court for an order compelling Plaintiff to arbitrate his claims, and awarding DraftKings the fees and costs incurred to bring this motion. In support of this motion, DraftKings relies on the accompanying Memorandum of Law and the Declarations of Tim Dent and Eric Neyman.

WHEREFORE, DraftKings respectfully requests that this Court grant its motion, order this matter to arbitration, dismiss Plaintiff’s claims, and award DraftKings its attorneys’ fees and expenses incurred to compel Plaintiff to comply with the terms of the arbitration agreement.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), DraftKings requests an oral argument on its motion to compel arbitration.

Respectfully submitted,

DraftKings, Inc.

By their attorneys,
MCCARTER & ENGLISH, LLP

By: /s/ Eric Neyman
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September 1, 2015

LOCAL RULE 7.1 CERTIFICATE

I certify that, pursuant to Local Rule 7.1, counsel for the parties conferred by telephone on August 17, 2015 and made a good faith attempt to narrow the issues raised in this motion, but Plaintiff's counsel stated they would not agree to arbitrate and would oppose this motion.

/s/ Eric Neyman
Eric Neyman

CERTIFICATE OF SERVICE

I, Eric Neyman, certify that on this 1st day of September, 2015, this document was electronically filed with the Clerk of the Court using the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), pursuant to Local Rule 5.4(C).

/s/ Eric Neyman
Eric Neyman